

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Grover Sellers
Attorney General

Hon. Bayne Satterfield
Firemen's Pension Commissioner
State Capitol Bldg.
Austin, Texas

Dear Sir:

Opinion No. 0-5515

Re: Under the given facts, may the town of Garden Oaks participate in the benefits of the Firemen's Disability and Retirement Fund?

This will acknowledge receipt of your recent letter which reads as follows:

"The town of Garden Oaks, Harris County, Post Office Houston, Texas, which has a regularly organized fire department, has applied to this Department for participation in the Firemen's Disability and Retirement Fund, operated under the provisions of Art. 6243-e, Revised Civil Statutes of Texas.

"The town of Garden Oaks is not incorporated as a city, but is incorporated as a water district, Chapter 3A, Title 128, Volume 21, Vernons annotated Civil Statutes of the State of Texas.

"Please advise us if, in your opinion, this department may participate in the benefits of the Firemen's Disability and Retirement Fund as shown above."

We quote in part from Sec. 3 of Art. 6243e, Vernon's Annotated Civil Statutes;

"That all incorporated cities and towns in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer,

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with fire fighting apparatus and equipment of the value of One Thousand Dollars (\$1000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the 'Board of Firemen's Relief and Retirement Fund Trustees' to receive, handle and control, manage, and disburse such Fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the 'Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas.' The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively. . . . Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of said Board of Trustees. The city or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such.

Said Board of Firemen's Relief and Retirement Fund Trustees of each such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein provided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund; together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

" "

We have found no provision in Art. 6243e, supra, positively limiting its purview to fire departments of incorporated cities or towns in this State; however, the above quoted language from Sec. 3, does in effect so limit the scope of the Firemen's Relief Pension Fund. This section deals with the composition of the Board of Trustees, which is the custodian and administrator of its Pension Fund.

The Board of Trustees is composed of the mayor and city treasurer of an incorporated city or town of this state together with three members of the regularly organized active fire department of such town or city. The mayor and city treasurer are respectively the chairman and treasurer of the Board. In fact, the entire structure of the Board is built around the officials of incorporated cities or towns and members of fire departments of such cities and towns. We have found no other provision for the formulation of the Board and know of none under the present wording of the Act.

The Board of Trustees is the mechanism of the Pension Fund; through it all claims are presented and settled and all receipts and disbursements of moneys belonging to the Fund are handled. Without such a Board, naturally the entire system surrounding the Pension Fund could not operate.

An incorporated water district is not an incorporated city or town. It has no mayor or city treasurer. In fact, the

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attributes of an incorporated city or town are distinct and separate from those of an incorporated water district. We thus do not believe a Board of Trustees could be composed under an incorporated water district set up according to the provisions of Art. 6243e, supra.

It is therefore the opinion of this department that your question should be answered in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Fred C. Chandler
Assistant

By /s/ Robert O. Koch

ROK:db:bbh

APPROVED AUG. 25, 1943
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
By - B.W.B., Chairman